

[DISCUSSION DRAFT]

116TH CONGRESS
1ST SESSION

H. R. _____

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, non-public information.

IN THE HOUSE OF REPRESENTATIVES

Mr. HIMES introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Securities Exchange Act of 1934 to prohibit certain securities trading and related communications by those who possess material, nonpublic information.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Insider Trading Prohi-
5 bition Act”.

1 **SEC. 2. PROHIBITION ON INSIDER TRADING.**

2 (a) IN GENERAL.—The Securities Exchange Act of
3 1934 (15 U.S.C. 78a et seq.) is amended by inserting after
4 section 16 the following new section:

5 **“SEC. 16A. PROHIBITION ON INSIDER TRADING.**

6 “(a) PROHIBITION AGAINST TRADING SECURITIES
7 WHILE IN POSSESSION OF MATERIAL, NONPUBLIC IN-
8 FORMATION.—It shall be unlawful for any person, directly
9 or indirectly, to purchase, sell, or enter into, or cause the
10 purchase or sale of or entry into, any security, security-
11 based swap, or security-based swap agreement, while in
12 possession of material, nonpublic information relating to
13 such security, security-based swap, or security-based swap
14 agreement, or relating to the market for such security, se-
15 curity-based swap, or security-based swap agreement, if
16 such person knows, or recklessly disregards, that such in-
17 formation has been obtained wrongfully, or that such pur-
18 chase or sale would constitute a wrongful use of such in-
19 formation.

20 “(b) PROHIBITION AGAINST THE WRONGFUL COM-
21 MUNICATION OF CERTAIN MATERIAL, NONPUBLIC INFOR-
22 MATION.—It shall be unlawful for any person whose own
23 purchase or sale of a security, security-based swap, or
24 entry into a security-based swap agreement would violate
25 subsection (a) (referred to in this subsection as the ‘com-
26 municating person’), wrongfully to communicate material,

1 nonpublic information relating to such security, security-
2 based swap, or security-based swap agreement, or relating
3 to the market for such security, security-based swap, or
4 security-based swap agreement, to any other person if—

5 “(1) the other person—

6 “(A) purchases, sells, or causes the pur-
7 chase or sale of, any security or security-based
8 swap or enters into or causes the entry into any
9 security-based swap agreement, to which such
10 communication relates; or

11 “(B) communicates the information to an-
12 other person who makes or causes such a pur-
13 chase, sale, or entry while in possession of such
14 information; and

15 “(2) such a purchase, sale, or entry while in
16 possession of such information is reasonably foresee-
17 able.

18 “(c) STANDARD AND KNOWLEDGE REQUIREMENT.—

19 “(1) STANDARD.—For purposes of this section,
20 trading while in possession of material, nonpublic in-
21 formation under subsection (a) or communicating
22 material nonpublic information under subsection (b)
23 is wrongful only if the information has been obtained
24 by, or its communication or use would constitute, di-
25 rectly or indirectly—

1 “(A) theft, bribery, misrepresentation, or
2 espionage (through electronic or other means);

3 “(B) a violation of any Federal law pro-
4 tecting computer data or the intellectual prop-
5 erty or privacy of computer users;

6 “(C) conversion, misappropriation, or other
7 unauthorized and deceptive taking of such in-
8 formation; or

9 “(D) a breach of any fiduciary duty, a
10 breach of a confidentiality agreement, a breach
11 of contract, or a breach of any other personal
12 or other relationship of trust and confidence.

13 “(2) KNOWLEDGE REQUIREMENT.—It shall not
14 be necessary that the person trading while in posses-
15 sion of such information (as proscribed by sub-
16 section (a)), or making the communication (as pro-
17 scribed by subsection (b)), knows the specific means
18 by which the information was obtained or commu-
19 nicated, or whether any personal benefit was paid or
20 promised by or to any person in the chain of com-
21 munication, so long as the person trading while in
22 possession of such information or making the com-
23 munication, as the case may be, was aware, con-
24 sciously avoided being aware, or recklessly dis-

1 regarded that such information was wrongfully ob-
2 tained or communicated.

3 “(d) DERIVATIVE LIABILITY.—Except as provided in
4 section 20(a), no person shall be liable under this section
5 solely by reason of the fact that such person controls or
6 employs a person who has violated this section, if such
7 controlling person or employer did not participate in, prof-
8 it from, or directly or indirectly induce the acts consti-
9 tuting the violation of this section.

10 “(e) EXEMPTED TRANSACTIONS.—

11 “(1) IN GENERAL.—The Commission may, by
12 rule or by order, exempt any person, security, or
13 transaction, or any class of persons, securities, or
14 transactions, from any or all of the provisions of this
15 section, upon such terms and conditions as it con-
16 siders necessary or appropriate, if the Commission
17 determines that such action is not inconsistent with
18 the purposes of this section. The prohibitions of this
19 section shall not apply to any person who acts at the
20 specific direction of, and solely for the account of, a
21 person whose own securities trading, or communica-
22 tions of material, nonpublic information, would be
23 lawful under this section.

24 “(2) AUTOMATIC TRADING.—

1 “(A) IN GENERAL.—Not later than 180
2 days after the date of the enactment of this sec-
3 tion, the Commission shall determine if any
4 automatic trading transactions should be ex-
5 empted from any of the provisions of this sec-
6 tion and shall make such determination avail-
7 able to the public, including on the website of
8 the Commission.

9 “(B) INTERIM APPLICATION.—During the
10 period between the date of the enactment of
11 this section and the date on which the Commis-
12 sion makes a determination pursuant to sub-
13 paragraph (A), automatic trading transactions
14 shall be exempted from the provisions of this
15 section.

16 “(C) AUTOMATIC TRADING TRANSACTION
17 DEFINED.—For the purposes of this paragraph,
18 the term ‘automatic trading transaction’ means
19 any purchase or sale of a security, security-
20 based swap, or security-based swap agreement
21 that—

22 “(i) occurs automatically; or

23 “(ii) is made pursuant to an advance
24 election.”.

1 (b) CONFORMING AMENDMENTS.—The Securities
2 Exchange Act of 1934 (15 U.S.C. 78a et seq.) is further
3 amended—

4 (1) in section 21(d)(2), by inserting “, section
5 16A of this title” after “section 10(b) of this title,”;

6 (2) in section 21A—

7 (A) in subsection (g)(1), by inserting “and
8 section 16A,” after “thereunder,”; and

9 (B) in subsection (h)(1), by inserting “and
10 section 16A,” after “thereunder,”; and

11 (3) in section 21C(f), by inserting “or section
12 16A,” after “section 10(b)”.

13 (c) SENSE OF CONGRESS.—It is the sense of the Con-
14 gress that the amendments made by this Act are intended
15 to supercede section 10(b) or 14e of the Securities Ex-
16 change Act of 1934 with regard to the wrongful use or
17 wrongful communication of material, nonpublic informa-
18 tion in connection with the purchase or sale of securities,
19 security-based swaps, and security-based swap agree-
20 ments.